

1 APPEARANCES:

2 Panel Lead: ANDREW KWEE

3 Panel Members: TERESA STANLEY
4 SUZANNE BROWN

5 For the Appellant: ARTHUR HERSH
6

7 For the Respondent: STATE OF CALIFORNIA
8 DEPARTMENT OF TAX AND
9 FEE ADMINISTRATION

10 NALAN SAMARAWICKREMA, HEARING REP.
11 CHAD BACCHUS, TAX COUNSEL
12 JASON PARKER, HEARING REP.
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I N D E X

E X H I B I T S

(Department's Exhibits A-J were received at page 9)

(Appellant's Exhibits 1-6 were received at page 9)

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By Mr. Hersh	35
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1 Cerritos, California, Wednesday, July 12, 2023

2 1:00 p.m.

3
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5 JUDGE KWEE: We are opening the record in the Appeal
6 of Kristen Ann Eldar. This matter is being held before
7 the Office of Tax Appeals, the OTA Case Number is
8 19024292.

9 Today's date is Wednesday, July 12th, 2023, the
10 time is approximately 1:02 p.m. This hearing is being
11 live-streamed on OTA's public YouTube channel and it's
12 also being conducted live in Cerritos, California in OTA's
13 Hearing Office.

14 Today's hearing is being held by a panel of three
15 Administrative Law Judges. My name is Andrew Kwee and I
16 will be the lead judge today. The other two members of
17 this panel are to my right, Judge Teresa Stanley, and to
18 my left, Judge Suzanne Brown.

19 All three of the judges will meet after the
20 hearing and produce a written decision as equal
21 participants. Even though I will be conducting the
22 hearing today, all the other members of this panel are
23 equal participants and they can interrupt the proceeding
24 at any time if there's any additional information that we
25 need to decide this appeal.

1 And just for the record, I'll ask the parties to
2 please state their names and who they represent.

3 And I will start with the representatives for the
4 tax agency.

5 MR. SAMARAWICKREMA: Nalan Samarawickrema, hearing
6 representative for the Department.

7 MR. PARKER: Jason Parker, Chief of Headquarters,
8 Operations Bureau.

9 MR. BACCHUS: Chad Bacchus, Attorney IV with legal
10 division.

11 JUDGE KWEE: Okay. And for Appellant?

12 MR. HERSH: Arthur Hersh, appearing for Kristen Ann
13 Eldar.

14 JUDGE KWEE: Perfect. Just look for the green dot,
15 you don't have to keep your finger on the microphone to
16 have it turned on though.

17 MR. HERSH: Thank you.

18 JUDGE KWEE: So my understanding -- oh. Actually,
19 before I get into the specifics of the preliminary
20 matters, we did have two panel substitutions in the last
21 week or two. Unfortunately, we had some conflicts and we
22 now have two new members of this panel. First is Judge
23 Teresa Stanley, on my right, is replacing Judge Keith
24 Long, and on my left, Judge Suzanne Brown is replacing
25 Judge Natasha Ralston.

1 I will check with CDTFA. Do you have any
2 objections based on the substitution of the two panel
3 members?

4 MR. SAMARAWICKREMA: No objections.

5 JUDGE KWEE: Okay. And for Appellant, did you have
6 any objections for the substitution of the two panel
7 members?

8 MR. HERSH: No, not at all.

9 JUDGE KWEE: Great. Thank you.

10 As far as witnesses, I believe the parties had
11 agreed that there are no witnesses today that will be
12 called, it is just legal arguments by the party
13 representatives, and I don't see any witnesses checked in.
14 I believe that is correct.

15 CDTFA, is that correct for you?

16 MR. SAMARAWICKREMA: Yes, it is.

17 JUDGE KWEE: Okay. And Appellant that's still correct
18 for you?

19 MR. HERSH: Correct.

20 JUDGE KWEE: Okay. Great. And as far as the
21 exhibits, we had discussed those during the prehearing
22 conference a couple weeks back.

23 For CDTFA we had Exhibits A through I.

24 And for Appellants we had Exhibits 1 through 6.

25 There were no procedural objections to admitting

1 those documents, and those documents were provided to the
2 parties as an attachment to the minutes and orders that
3 went out following the prehearing conference. Is that a
4 correct summary of the exhibits?

5 And the there been no objections, I'll start with
6 Appellant. Is that correct for you? You had Exhibits 1
7 through 6 and no objections to CDTFA's exhibits.

8 MR. HERSH: Yes. No objections.

9 JUDGE KWEE: Okay. And no additional exhibits today?

10 MR. HERSH: No additional exhibits.

11 JUDGE KWEE: Okay. And CDTFA, is that also correct
12 for you?

13 MR. SAMARAWICKREMA: Exhibit A through J.

14 JUDGE KWEE: A through H, I -- one second.

15 MR. SAMARAWICKREMA: J is the Department's response to
16 Appellant's opening brief.

17 JUDGE KWEE: Okay. I had written A through I in the
18 minutes and orders. Did I just number that incorrectly or
19 was there one new submission after the prehearing
20 conference?

21 MR. SAMARAWICKREMA: No. We submitted J before the
22 appeal and conference.

23 JUDGE KWEE: Then I must have just numbered that
24 incorrectly. Let me pull it up really quickly.

25 Okay. It is page 241 and I listed all 241 pages.

1 I'm sorry, I just typed in I instead of a J. And I do see
2 your exhibit index and your exhibit binder also reflects
3 Exhibit J, so I apologize for that.

4 Thank you for the clarification. I will make a
5 note that Exhibits A through J for CDTFA -- so you have no
6 new exhibits and no objections to Appellant's exhibits, is
7 that correct?

8 MR. SAMARAWICKREMA: Yes. No objections.

9 JUDGE KWEE: Okay. Perfect. Thank you. So we will
10 admit CDTFA's Exhibits A through J, as in jump, and
11 Appellant's Exhibits 1 through 6 into the evidentiary
12 record without objection.

13 (Department's Exhibits A-J were received in
14 evidence by the Administrative Law Judge.)

15 (Appellant's Exhibits 1-6 were received in
16 evidence by the Administrative Law Judge.)

17 JUDGE KWEE: As far as the issue, my understanding is
18 this is a single issue case, whether adjustments are
19 warranted to the measure of unreported taxable jewelry
20 store sales. I understand that also CDTFA had reduced the
21 measured from 481,000 to approximately 219,000.

22 And that Appellant agrees that some portion of
23 this is taxable it's just the contention is that
24 additional adjustments are warranted and that's what the
25 focus of the hearing will be about on the minutes and

1 orders that we had discussed at the prehearing conference
2 that summarized a couple areas of contention.

3 Is that a correct summary of the issue in the
4 case for CDTFA?

5 MR. SAMARAWICKREMA: Yes, Judge.

6 JUDGE KWEE: Okay. And for Appellant, is that a
7 correct summary of the issue in the case?

8 MR. HERSH: Correct, Judge.

9 JUDGE KWEE: Okay. Thank you.

10 During the prehearing conference, I had also
11 placed the parties will notice that -- CDTFA and Appellant
12 that OTA might will ask questions regarding, basically
13 concerning the purity level, of the 90 percent purity
14 level of certain coins that were or were not accepted
15 during the audit.

16 CDTFA, are you prepared to answer those
17 questions?

18 MR. SAMARAWICKREMA: Yes, Judge.

19 JUDGE KWEE: Okay. And Appellant, you're also
20 prepared to answer those questions?

21 MR. HERSH: Yes, Judge.

22 JUDGE KWEE: Perfect. Thank you.

23 With that said, I'll just give everyone a quick
24 run down of how the organization and the order of
25 presentation for today.

1 out the tax based on the supporting documentation that the
2 auditor had assessed, based on the items that she was
3 provided documentation for, the percentages would have
4 been at 35 percent for 2012 if overall sales, 29 percent
5 for 2013, and 33 percent for 2014.

6 Now, for all transactions the auditor was not
7 provided supporting documentation for she deemed those a
8 hundred percent taxable, which in my opinion is
9 unreasonable due to the sample size that she reviewed was
10 large enough to, I think, make a pretty good determination
11 that the rest of the -- if she was provided documentation
12 for the other sales, she would arrive at a percentage
13 similar to what she had arrived at based on what she did
14 review.

15 And in most cases, this is the only audit I've
16 ever been a part of which I went off the audit where every
17 transaction was requested to be accounted for, not just
18 the sample size. In normal cases they would just -- when
19 you're reviewing documentation of three years and asking
20 the taxpayer to procure those documents, especially you
21 know, after 2012 she wanted to put documentation for it
22 and I think this audit was picked up in '16, I may be
23 wrong on that, the original -- when it was first picked
24 up, so we're talking, you know, four years after the first
25 audit period, two years from, you know, the most current

1 based on her --

2 So really there's no more -- and there was
3 documentation that was provided that she deemed was
4 insufficient, it was incredible due to the handwritten
5 nature of the invoices.

6 So with that being said, I just believe that she
7 did have enough -- a big enough sample size to -- just a
8 hundred percent just seems unreasonable to me for the
9 transaction she did not receive documentation for.

10 And so two issues just applying those percentages
11 to the other taxable sales, and also reversing out the
12 taxation of the American Eagle sales, which I have a new
13 calculation here and I can send them afterward as well
14 totaling those American Eagle sales that she listed as
15 taxable.

16 So that's pretty much like, I said I don't have
17 anymore additional documents, everything was provided.
18 You know, to come in here with just a bunch of handwritten
19 invoices again, it just seems -- I just feel like this
20 would be the most reasonable and acceptable way to proceed
21 to challenging the assessment, particularly in this
22 industry where there are a lot of tax exempt sales, you
23 know, based on certain conditions, we have criteria based
24 on bulk, purity of the gold, and a lot of repairs they do
25 a lot of repair for jewelry as well.

1 In this industry there are a lot of nontaxable
2 sales, if those criteria are met, and the majority of the
3 time these sales are in bulk when we're dealing with gold.

4 And the cash sales as well, I disagree with the
5 25 percent. I think of the 25 percent -- those same
6 taxable percentages I asked to be applied to the remaining
7 transaction be applied to the taxable sales. So for
8 instance, rather than 25 percent for 2012, the cash
9 assessment would be 8.75 percent for 2013, would be 7.25
10 percent, and for 2014 would be 8.25 percent. And I could
11 show you how I arrived at those later on. I'm not sure if
12 I submit can submit those following this.

13 JUDGE KWEE: So what normally happens, if you are
14 asking right now, is that following the hearing we close
15 the record, it means close the record is that no
16 additional submissions are accepted beyond that point and
17 then we issue an opinion within a hundred days.

18 MR. HERSH: Right. Because that was brought up in my
19 original argument, the cash sales were brought up, so it
20 should be covered.

21 JUDGE KWEE: And also if we were, for example to make
22 an adjustment for the AE Coins, I believe the information
23 is sufficient in the audit working papers for us just to
24 issue an order and CDTFA would review their documents and
25 make --

1 MR. HERSH: Right. The auditor was thorough in
2 titling the name of the coin and the total sales amount,
3 so it would be easy to calculate and back out.

4 And yeah, that's it, that is what I have. I
5 mean, it's pretty much the bulk of my -- the basis of my
6 argument or my dispute for the adjustment on the taxable
7 measure.

8 JUDGE KWEE: Okay. Thank you. I will start by
9 turning to my co-panelist to my right.

10 Judge Stanley, did you have any questions for the
11 Appellant's representative?

12 JUDGE STANLEY: No, I don't at this time. Thank you.

13 JUDGE KWEE: Okay. Then I'll turn next to the judge
14 on my left.

15 Judge Brown, do you have any questions for the
16 Appellant's representative?

17 JUDGE BROWN: I'll reserve my questions until after we
18 hear CDTFA's presentation. Thank you.

19 JUDGE KWEE: Oh. Sorry. I just turned that off.

20 Then I will turn it over to CDTFA for their
21 opening presentation.

22 CDTFA, you have 30 minutes for your presentation.
23 You may proceed.

24 ///

25 ///

1 PRESENTATION

2 MR. SAMARAWICKREMA: Thank you, Judge.

3 Appellant, a sole proprietorship, operates a
4 jewelry store known as the Gold Store in Palm Springs,
5 California.

6 Appellant jewelry, vintage and antique jewelry,
7 watches, and precious metals, fabricated jewelry, and fine
8 jewelry at retail. Appellant also affords jewelry repair
9 resells. Appellant's sales invoices indicate that she did
10 not collect sales tax reimbursement for most of her
11 fabrication labor, jewelry, taxable coins, and fabricated
12 gold, or fabricated silver.

13 The Department audited Appellant's business for
14 the period April 1st, 2012 to June 30th, 2014. During the
15 audit period, Appellant reported around 363,000 as total
16 sales and claimed around \$357,000 as sales for resale and
17 other deductions, resulting in reported taxable sale of
18 around \$6,000, and that will be on Exhibit A, pages 28 and
19 29.

20 During our presentation, we will explain why the
21 Department rejected Appellant's reported taxable sales.
22 Why? The Department used an indirect audit approach. And
23 how the department determined Appellant's unreported sales
24 tax for the audit period for this Appellant.

25 During the audit, Appellant failed to provide

1 complete sales records for cash, checks, and credit card
2 sales. Appellant did not provide complete documents of
3 all journal entries such as, sales invoices, service
4 invoices, and credit card sales receipts to support her
5 total taxable and claim nontaxable sales for the audit
6 period.

7 In addition, Appellant failed to provide complete
8 purchase invoices of merchandise and materials or purchase
9 journals for the audit period. Appellant was unable to
10 explain how she reported her sales on her Sales and Use
11 Tax Returns. Appellant was also unable to explain what
12 sources she relied upon to complete her Sales and Use Tax
13 Returns.

14 The Department completed three verification
15 methods to evaluate the reasonableness of Appellant's
16 reported total taxable and nontaxable claimed sales.
17 First, the Department analyzed reported taxable sales for
18 the audit period and noted that Appellant only reported
19 around 2 percent or \$7 per day as her taxable sales. And
20 that will be on Exhibit A, page 51.

21 Based on Appellant's business the Department
22 expected to see a higher average taxable sale amount and a
23 taxable sales percentage than the reported amount and
24 percentages.

25 Second, the Department reviewed Appellant federal

1 income tax returns for years 2011, 2012, and 2013 and
2 noted low average recorded net income of around \$13,000
3 for these years. And that will be on your Exhibit A, page
4 54.

5 This is an indication that not all Appellant's
6 transactions had been reported in a federal income tax
7 return for these years.

8 Third, the Department opt in credit cards
9 information from his internal sources and compared the
10 reported total sales to the credit card sales and
11 calculated an oral credit card sales ratio of around 171
12 percent, ranging from as low as 138 percent to as high as
13 215 percent for the audit. And that will be on your
14 Exhibit A, page 52.

15 This is an indication that not all of Appellant's
16 credit cards, checks, and cash sales transactions had been
17 reported in a Sales and Use Tax Return for the audit
18 period.

19 Appellant was unable to explain the reason for
20 the low average taxable sales, low average net income, and
21 high reported credit card sales ratios. Appellant did not
22 provide the information required to determine Appellant's
23 cash and checks sales percentage. Therefore, based on
24 Appellant's location, items sold, and selling prices, the
25 Department determined cash and check sale percentage of 10

1 percent, not 25 percent as Appellant stated today.

2 Appellant did not provide any information to
3 determine a low cash and check sale percentage. Appellant
4 provided some sales invoices for sales of bullion coins,
5 fine jewelry, fabrication labor, and nontaxable repair
6 labor, paid for with credit cards for the period May 1st,
7 2012 through June 30th, 2014.

8 Appellant also provided credit card sales
9 information for the first six months of 2014, and credit
10 card receipts for personal credit card transactions,
11 included in the credit card transactions reported on
12 Appellant credit card sales for the audit period.

13 The Department also obtained credit card sales
14 information from his internal sources. Based on the
15 provided sales invoices, the Department determined that
16 Appellant's credit card sales include taxable and exempt
17 sales of gold and silver coins and bullions, taxable gold
18 or silver sales included, but sales less than \$1,500 and
19 fabricated gold and fabricated silver.

20 The Department also found some of Appellant's
21 gold or silver sales over \$1,500 were fabricated, but did
22 not have the required gold or silver content to be exempt
23 from sales tax.

24 Based on the credit card sales information, the
25 Department calculated total credit card sale of around

1 \$663,000 for the audit period. And that will be on your
2 Exhibit A, page 121.

3 The Department reviewed personal credit card
4 transactions receipt provided by Appellant and determined
5 that personal credit card transaction totaling around
6 \$42,000 were included in the credit card transaction for
7 the audit period. And that will be on Exhibit C, pages 90
8 and 91.

9 Appellant also provided sales invoices of around
10 \$416,000 to support exempt sales of coin and bullion and
11 exempt repair labor paid with credit cards, and that will
12 be on Exhibit A, page 41.

13 Based on this information, the Department
14 calculated audited taxable credit card sale of around
15 \$205,000 for the audit period, and that will be on Exhibit
16 A, page 40.

17 The Department used the audible tax sale of
18 around \$205,000, cash, and check sales ratio of 10 percent
19 to determine audited total taxable sale of around \$226,000
20 for the audit period, and that will be on Exhibit A, page
21 40.

22 The Department then compared the audited total
23 taxable sales with reported taxable sales of around \$6,000
24 to determine unreported taxable sales of around \$220,000
25 for the audit period, and that will be on Exhibit A, page

1 40.

2 The Department compared the unreported taxable
3 sales with the reported taxable sale of around \$6,000 to
4 calculate an error rate over 3,700 percent for the audit
5 period.

6 When the Department is not satisfied with
7 accuracy of the tax return file, it may rely upon any
8 facts contained in those returns or upon any information
9 that comes into the Department's position to determine if
10 any tax liability exists. Taxpayer should mention and
11 make available for examination on request by the
12 Department all records necessary to determine the correct
13 tax liability, under the sales and use tax law, and all
14 records necessary for the proper completion of the sales
15 and use tax return.

16 When a taxpayer challenge and orders of
17 determination the Department has a burden to explain the
18 basis for that deficiency. When the Department's
19 explanation appears reasonable, the burden of proof shifts
20 to the taxpayer to explain why the Department asserted
21 deficiency is not valid.

22 The audit calculation of unreported taxable
23 sales, based on the available sales invoices and credit
24 card sales ration approach were reasonable.

25 Appellant contends that the Department did not

1 review all her sales invoices to determine the taxable
2 invoices, sales invoice sales for the audit period.
3 Appellant is requesting that the taxable percentage the
4 Department computed for transactions, which sales invoices
5 were provided for, be applied to the remaining sales which
6 the Department claimed to have not received sales invoices
7 for.

8 Using provided sales invoices that were paid with
9 credit cards, Appellant calculated a taxable sales
10 percentages and requested to apply these percentages to
11 determine her taxable sales for the audit period, and that
12 will be on Appellant's Exhibit 1. The Department reviewed
13 and analyzed these calculations and ultimately rejected
14 them.

15 Upon examination of Appellant's credit card
16 amounts and number of transactions, the Department noted
17 that Appellant did not provide any supporting documents to
18 support that Appellant's sales transactions paid with
19 credit cards fall within the same range of sales amounts.

20 However, the Department analyzed Appellant's
21 provided credit card sales amounts and number of sales
22 transactions listed on her Form 1099-K for year 2013 and
23 found average sales value of around \$810 for transactions,
24 and that will be on Appellant's Exhibit 2, pages 3 and 4.

25 Similar analyses was made for the year 2013,

1 comparing 65 sales invoices provided by Appellant and
2 total sales invoice amount of around \$230,000. This
3 result in an average of around \$3,500 for transactions,
4 and that will be on Exhibit A, pages 45 from 46.

5 Appellant did not provide around 260 sales
6 transactions paid with credit cards for the year 2013.
7 The Department used Appellant's 1099-K information to
8 determine a total value of around \$70,000 for these 260
9 sales transactions. The Department used this information
10 to calculate the average sales price per transaction of
11 around \$270.

12 The average sale value per transaction calculated
13 using the 65 sales invoices was significantly higher than
14 the average sales value of \$270 per transaction for the
15 sales invoices that were not available to analyze.

16 Based on music analyses, the Department
17 determined that it was not reasonable and not
18 representative for Appellant to calculate taxable sales
19 percentage using 65 sales invoices to estimate taxable
20 sales for remaining 260 sales invoices. And therefore,
21 the Department rejected Appellant-proposed audit
22 calculations.

23 Previously, Appellant submitted additional 23
24 sales invoices totaling around \$84,000 to claim
25 additional exempt sales. The Department reviewed and

1 analyzed the sales invoices and ultimately rejected them.

2 Upon examination of Appellant's sales invoices,
3 the Department noted Appellant did not provide any
4 supporting documents, such as credit card receipts and or
5 copies of checks to collaborate the sales amount and sales
6 invoices. It was also noted that the sales invoices
7 provided for second quarter 2012 are greater than the
8 audited sales for this period.

9 Absent of additional collaborating evidence,
10 Appellant-provided information is insufficient to support
11 further adjustment to the audit finding.

12 According to the minutes and orders of prehearing
13 conference, you panel also requested to discuss the reason
14 why the Department set up coin transactions listed in
15 Audit Schedule R4-12C-1, lines 20, 21 and 25, Schedule
16 R4-12C-2 line 13, 14, 20, 28, and 45, and Schedule
17 R4-12C-3, line 2.

18 The sales tax applied to sale of gold or sale of
19 bullion, except sales in bulk of monetized bullion,
20 non-monetized gold or silver bullion, and new minted
21 coins. A sale in bulk occurs if the total market value
22 sold in a single transaction is 1,500 or more. The sales
23 tax also applies to sale of fabricated gold or fabricated
24 silver.

25 According to Annotation 1680260, the Treasury

1 Department's definition of gold bullion is used for the
2 purpose of Revenue and Taxation Code Section 6355. This
3 annotation indicates that under the gold regulations,
4 fabricated gold is excluded from the definition of gold
5 bullion. Fabricated gold is defined as any processed or
6 manufactured gold having a gold content not exceeding 90
7 percent of the total value of the processed or
8 manufactured article.

9 According to the gold industry, it is determined
10 that sales of 22 carat gold have gold content of 91.67
11 percent, 18 carat gold has 75 percent, 14 carat gold has
12 58.3 percent, and 12 carat gold has 50 percent gold
13 content.

14 According to Annotation 1680240, silver bullion
15 within the meaning of Revenue and Taxation Code Section
16 6383 does not include fabricated silver. And item is
17 considered fabricated silver when less than 80 percent of
18 its total value is attributable to its silver content.

19 First, Schedule R4-12C-1, line 25 and Schedule
20 R4-12C-2, line 20, according to these two sales invoices,
21 Appellant sold 18 carat gold. Because gold content of 18
22 carat gold is less than 90 percent, these sales do not
23 qualify as exempt sales, and that will be on Exhibit A,
24 pages 42 and 45.

25 Second, Schedule R4-12C-2, line 13 and 14

1 according to these two sales invoices, Appellant sold 14
2 carat gold, which also has a gold content of less than 90
3 percent, and that will be on Exhibit A, page 45.

4 Therefore, these sales do not qualify as exempt sales.

5 Third, Schedule R4-12C-2, line 28 and 45 and
6 Schedule R4-12C-3, line 2, according to these three sales
7 invoices, Appellant sold various types of coins and
8 watches and these were not separated to identify in
9 Appellant's invoices to identify whether these three sales
10 invoices include any exempt sales, and that will be on
11 Exhibit A, pages 45, 46, and 47.

12 Fourth, Schedule R4-12C-1, lines 20 and 21,
13 according to these two sales invoices Appellant sold 22
14 carat gold, 24 carat gold, and 18 carat gold, but did not
15 provide sales item details to identify whether Appellant's
16 sales included any exempt sales, and that will be on
17 Exhibit A, page 42. Therefore, the Department determined
18 the total sales amount as taxable.

19 As mentioned earlier, Appellant did not provide
20 complete sales source documentation to support her
21 reported total taxable and claimed nontaxable sales for
22 the audit period. Appellant did not provide complete
23 purchase invoices. Appellant failed to provide
24 documentary evidence to support her taxable sales for the
25 audit period.

1 The Department was unable to verify the accuracy
2 of reported sales tax using a direct audit method.
3 Therefore, an alternative audit method was used to
4 determine unreported sales tax. Accordingly, the
5 Department determined the unreported sales tax based upon
6 the best available information. The evidence shows that
7 the audit produced fair and reasonable results.

8 Appellant has not provided any reasonable
9 documentation or evidence to support an adjustment to the
10 audit finding. Therefore, the Department requests the
11 appeal be denied.

12 This concludes our presentation. We are
13 available to answer any questions the panel may have.
14 Thank you.

15 JUDGE KWEE: Thank you. I will start with the
16 co-panelist to my right.

17 Judge Stanley, did you have any questions?

18 MR. BACCHUS: Mr. Kwee, if I can just add one thing.
19 I apologize for interrupting you.

20 I wanted to address the argument about the
21 American Eagle Coins. And according to Annotation
22 168.005, American Eagle Coins can be exempt when they are
23 sold to bulk. So the disallowed transactions of American
24 Eagle Coins in the audit are sales that were not in bulk.

25 JUDGE KWEE: Thank you. My understanding was that the

1 sales over that amount were allowed for AE Coins and also
2 for Mexican Pesos and Krugerrand -- I hope I'm pronouncing
3 that correctly. I did have a question about that, but I
4 was going to turn to my co-panelists first.

5 Was that all?

6 MR. BACCHUS: Yes, that's it. Thank you.

7 JUDGE KWEE: Okay. Thank you. But I'll start with my
8 co-panelist to my right.

9 Judge Stanley, did you have any questions for
10 CDTFA?

11 JUDGE STANLEY: No, I don't. Thank you.

12 JUDGE KWEE: Okay. Judge Brown, did you have any
13 questions for CDTFA?

14 JUDGE BROWN: Yes, I do. One second.

15 I wanted to follow up regarding CDTFA's
16 discussion toward the end of its presentation, regarding
17 the question that was identified in the minutes and orders
18 about the items on Schedule R4-12C-1 and R4-12C-2
19 regarding Regulation 1599.

20 It wasn't clear to me whether CDTFA had addressed
21 whether those items -- how they did or didn't need meet
22 the definition of monetized bullion. It seemed like you
23 were addressing whether they were non-monetized bullion
24 based on whether the gold was 22 carat, 18 carat, 14
25 carat, but I want -- and if I missed it, I apologize. You

1 can set me straight.

2 I wanted to ask then, whether CDTFA could address
3 whether the items that are addressed as -- that are
4 described in those audit pages on the schedules as coins
5 would meet the definition of monetized bullion under
6 Regulation 1599, Subdivision A-3. Where for example, I'll
7 just give one particular example, it says "Roman drachma."
8 Would that be monetized bullion?

9 MR. SAMARAWICKREMA: So can you -- you refer to our
10 R4-12C-1 and R4-12C-2 pages. Which line number are you
11 referring to?

12 JUDGE BROWN: One second. I'll look it up.

13 (Brief pause.)

14 JUDGE KWEE: Was that one the R4-12C-2, line 14 of the
15 drachma -- Roman coin drachma, 14 carat.

16 JUDGE BROWN: Thank you.

17 MR. SAMARAWICKREMA: Yeah. So the line 13 and 14, it
18 specifically says 14 carat. And the 14 carat gold doesn't
19 have the required gold content, and that's the reason we
20 disallowed and considered that transaction as a taxable.

21 JUDGE BROWN: I understand that in terms of analyzing
22 it as non-monetized bullion, but if it's drachma would it
23 be monetized bullion? Sorry. Yeah, monetized bullion.

24 MR. SAMARAWICKREMA: But their invoice specifically
25 says 14 carat gold.

1 JUDGE KWEE: Judge Brown, if I may?

2 JUDGE BROWN: Go ahead.

3 JUDGE KWEE: So I think the issue is that for the
4 American Eagle Coins, the Mexican Pesos and the
5 Krugerrands, the CDTFA -- if I am understanding correctly
6 -- you allowed those when the gold content was less than
7 22 karats, if it was 14 carats, if it was 18 carats, on
8 the basis it was monetized bullion.

9 I think that's what Suzanne is asking, how come
10 you allowed it when the purity level was below 90 percent
11 for some types of coins, but not for example, with the
12 Roman coin drachma.

13 MR. SAMARAWICKREMA: According to the Schedule R4-12C
14 series, if you may check the description, if it
15 specifically says 14 carat then we will disallow it. If
16 it specifically says 22 carat then we allow. And if you
17 can show that we allow a transaction that is less than 22
18 carat, then we can adjust the item.

19 MR. BACCHUS: If you could give us a few minutes to
20 discuss and we will be better able to answer the question.
21 I understand that the differences that you're asking
22 about, we just need to confirm.

23 JUDGE BROWN: That's fine. Thank you.

24 JUDGE KWEE: Did you want to call a recess at this
25 point so that you can discuss and then we can resume?

1 MR. BACCHUS: Are there other questions that we might
2 be able to answer first? I don't want to run into the
3 same issue.

4 JUDGE BROWN: I'll say I don't have any further
5 questions right now.

6 JUDGE KWEE: All of my questions also were pertaining
7 to the 90 percent threshold test.

8 MR. BACCHUS: And just to be clear, that is specific
9 to the monetized as opposed to the non-monetized?

10 JUDGE KWEE: Suzanne shaking her head yes. And that's
11 what my understanding of the issue was is that CDTFA
12 didn't consider the threshold purity level when it was in
13 a, AE Coin or a Krugerrand or a Mexican Peso. They just
14 allowed it for those items, but then for items which are
15 just listed as other coins, they looked at the purity
16 level and that's why I was asking if it was inconsistent
17 to treat some coins as allowable and some not allowable
18 based on applying or not applying the 99 percent test.

19 MR. BACCHUS: Understood. Thank you.

20 JUDGE STANLEY: Can I just add one thing. If you guys
21 wanted to refer to Schedule R41-414-A2, it talks about the
22 monetized coins.

23 JUDGE KWEE: Right. Were we going go on a recess at
24 this point? Or is that the direction we are going in?

25 MR. BACCHUS: We would appreciate that.

1 JUDGE KWEE: Okay. And how much time would CDTFA like
2 for their recess?

3 MR. BACCHUS: Five, ten minutes.

4 JUDGE KWEE: Okay. Let's do 10 minutes and resume at
5 2:00 p.m. We'll be back in 11 minutes and we'll go off
6 the record now. Thank you.

7 (Recess.)

8 JUDGE KWEE: Okay. We are back from a 10 -- 12 minute
9 break.

10 CDTFA, were you prepared to proceed with the
11 question.

12 MR. BACCHUS: Yes, we are.

13 JUDGE KWEE: Okay. When you're ready.

14 MR. BACCHUS: So our review of the schedules in
15 question did not -- we were not able to identify any
16 transactions that were allowed in the audit where the
17 value was under 90 percent.

18 If you have specific line items that we can look
19 at, but our review of the schedules didn't show any. So
20 for any transaction where we could verify the percentage
21 of gold and that it was a sale in bulk, if that percentage
22 was over 90 percent, then those transactions were allowed.

23 JUDGE BROWN: Well, my question is under Regulation
24 1599, Subdivision A-3 for the definition of monetized
25 bullion, does that percentage -- is that relevant?

1 MR. BACCHUS: For the Department, yes. We consider
2 that relevant and that is one of the determining factors.

3 JUDGE KWEE: All right. Judge Nellie did you have any
4 -- I am sorry.

5 Judge Brown, did you have any further questions?

6 JUDGE BROWN: Not at this time. Thank you.

7 JUDGE KWEE: Okay. Judge Stanley, did you have any
8 questions for CDTFA?

9 JUDGE STANLEY: So in our file in our record, we do
10 not have any timely waiver for Appellant. The NOD says it
11 is valid for the period April 1st, 2012 through June 30th,
12 2012, but it would be only if the Department obtained a
13 waiver from her.

14 Are you aware of whether that is the case or
15 whether I'm mistaken?

16 MR. SAMARAWICKREMA: The taxpayer -- if you check
17 Exhibit A, page 28, the taxpayer filed fiscal year, so we
18 showed a Notice of Determination before expiry of that
19 period.

20 JUDGE STANLEY: What was that page you said again?
21 Twenty?

22 MR. SAMARAWICKREMA: Page 28 is the transcript in the
23 taxpayer file physical year basis. And also if the panel
24 needs, we can provide a copy of the sales tax return to
25 demonstrate that we billed before -- within that three

1 year period.

2 And if you check original audit, we billed before
3 the period expired.

4 JUDGE STANLEY: Okay. Thank you.

5 JUDGE KWEE: Okay. I'm gonna go back to CDTFA with 90
6 percent question then.

7 So just to make sure we're on the same page, the
8 90 percent threshold for gold was CDTFA looking at 22 or
9 24 carat.

10 MR. SAMARAWICKREMA: The 22 is 91.67, that is 22 carat
11 is 91.67, so the 24 is more than that. And the 18 carat
12 doesn't have 90 percent, 18 carat or below doesn't have 90
13 percent.

14 JUDGE KWEE: Okay. So you allowed 22 carat or above.

15 MR. SAMARAWICKREMA: Yes.

16 JUDGE KWEE: Okay. I think that's where I was
17 confused. I thought CDTFA was looking at a 22 carat
18 threshold, not a 24 carat threshold for the 90 percent.
19 So I guess that answers my question because those coins
20 were 22 carats. So thank you.

21 If the panel -- I'm sorry.

22 Judge Stanley, did you have further questions?

23 JUDGE STANLEY: Yes. I was just going to follow up on
24 my last one. It seems that Appellant only became a fiscal
25 year filer on July 1st, 2012, not on April 1st, 2012, so I

1 guess the questionable time period is April 1st, 2012
2 through June 30th, 2004.

3 MR. PARKER: Judge Stanley, just real quick. In
4 Exhibit A, page 27 there's the copy of the waiver that has
5 the -- it was signed on June 25th, 2015, which would be
6 timely for the second quarter 2012. And it had the
7 through date of January 31st, 2016 which is after the date
8 of the Notice of Determination of November 16th, 2015.

9 JUDGE STANLEY: Thank you. That takes care of that.

10 JUDGE KWEE: Okay. If there are no further questions
11 from the panel, then I believe it is time to turn it over
12 to the parties for any closing remarks. Each party has 5
13 minutes for their closing remarks.

14 We'll turn it over first to Appellant's
15 representative. You have 5 minutes. You may proceed.

16
17 CLOSING STATEMENTS

18 MR. HERSH: Correct. Pertaining to the information
19 provided reinstating the way the auditor arrived at her
20 taxable sales, I'm in agreement with that. Like I stated,
21 it was just regarding the information was not provided
22 for.

23 And in response to the bulk sale the American
24 Eagle, stating that all bulk sales were not taxable. I
25 only included those that met the bulk threshold of \$1,500.

1 I did not challenge the ones that did not meet the 1,500.
2 So I came up with grand totals of 5,850 for period 4/1/12
3 to 12/31/12, 21,151 for period 11/13 to 12/13, and for the
4 final period came up with \$23,110 in American Eagle sales
5 that did meet the threshold, \$1,500 bulk sales.

6 Now the problem is a couple, for instance are
7 5,200 which say American Eagle and a battery repair, now
8 we can safely assume that battery repair should not cover
9 more that American Eagle sale was at least 1,500 in that
10 sale.

11 Those are my closing remarks. Just that I that I
12 did not challenge the American Eagle sales unless they met
13 the bulk threshold.

14 JUDGE KWEE: Okay. Thank you.

15 And I'll turn it over -- first, I'll ask the
16 panel.

17 Judge Stanley, did you have any final questions
18 for the opponents representative?

19 JUDGE STANLEY: No. Thank you for your presentations.

20 JUDGE KWEE: Okay. And Judge Brown did you have any
21 further -- any final questions for the appellants
22 representative?

23 JUDGE BROWN: No. Thank you.

24 JUDGE KWEE: Okay. Then it's to you, CDTFA, for your
25 final five minutes on a rebuttal.

1 MR. SAMARAWICKREMA: We have nothing to add. Thank
2 you.

3 JUDGE KWEE: All right. Then I believe we are ready
4 to conclude this hearing.

5 Judge Stanley, are you ready to conclude?

6 JUDGE STANLEY: Yes.

7 JUDGE KWEE: Okay. And Judge Brown, are you ready to
8 conclude?

9 JUDGE BROWN: Yes. Thank you.

10 JUDGE KWEE: Thank you. Great.

11 Okay. Everyone, thank you for coming in. This
12 case is submitted on Wednesday, July 12th, 2023. The
13 evidentiary record is now closed.

14 The panel will meet after today's hearing and
15 discuss and will issue an opinion within 100 days from
16 today's date. The appeal and the case in the Appeal of
17 Kristen Ann Eldar is now concluded.

18 (Hearing concluded at 2:15 p.m.)
19
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1 CERTIFICATE
2 OF
3 HEARING REPORTER

4 The undersigned hearing reporter does hereby certify:
5 That the foregoing was taken before me at the time and
6 place therein that any witnesses in the foregoing
7 proceedings were duly sworn; that a record was made of the
8 proceedings by me using a machine shorthand, recorded
9 stenographically, which was thereafter transcribed under
10 my direction.

11
12 I further certify I am neither financially interested
13 in the action nor a relative or employee of any attorney
14 or party to this action.

15
16 Dated July 12, 2023

17
18 Hanna Jenkin

19
20 
21
22

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